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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

Evolution Nutraceuticals, Inc. d/b/a Cardio  
Miracle,

Plaintiff,

V.

ThermoLife International, LLC

Defendant.

No. 2:25-cv-00461-DJH

**DEFENDANT THERMOLIFE  
INTERNATIONAL, LLC'S  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION**

**(Oral Argument Requested)**

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## I. INTRODUCTION

Cardio Miracle brought these proceedings ostensibly for urgent, extraordinary relief. Instead, seven months later, they remain pending because Cardio Miracle canceled depositions at the last hour, injected new arguments and a new expert for the first time on reply, and then told the Court it would be “manifestly unfair” not to consider its critical new arguments. Dkt. 73 at 16. The Court agreed that Cardio Miracle’s reply “undoubtedly contains newly raised arguments” but denied the PI request without prejudice for Cardio Miracle to present its supposedly essential arguments. Dkt. 78 at 3. Its Renewed Motion confirms this Court should deny a preliminary injunction for two reasons.

*First*, Cardio Miracle has abandoned virtually all of the arguments it claimed were so essential that excluding them would be “manifestly unfair.” Cardio Miracle has instead repeated the arguments it raised seven months ago. That speaks volumes. All the while, Cardio Miracle knowingly relied on ThermoLife’s stipulation—out of respect for this Court—not to resume Amazon takedowns on ThermoLife’s U.S. Patent No. 8,455,531 (“’531 patent”). Cardio Miracle has repeatedly insulted ThermoLife, its CEO, and its counsel—its conduct is improper and confirms there are no grounds for injunctive relief.

*Second*, Cardio Miracle’s arguments fail on the merits. As a threshold matter, because the injunction it seeks raises First Amendment implications, Cardio Miracle must show that ThermoLife acted in bad faith. Cardio Miracle has twice failed to address that requirement; it now provides a single, conclusory sentence. The record over the last seven months confirms ThermoLife’s strong basis to assert its patent rights. ThermoLife’s actions are neither objectively nor subjectively baseless. The lack of bad faith is dispositive.

Even if Cardio Miracle could show bad faith (it cannot), it also fails to establish the four preliminary injunction factors. There is no likelihood of success because Cardio Miracle’s strained theory of non-infringement contradicts the law and its own products’ marketing, and its invalidity arguments—which the PTO already largely rejected—do not

1 overcome the statutory presumption of validity. There is no irreparable harm because  
 2 Cardio Miracle repeatedly delayed these proceedings to its benefit, and its own VP of  
 3 Finance admitted any alleged harm is quantifiable in dollars. The balance of hardships does  
 4 not weigh in Cardio Miracle's favor. Instead, Cardio Miracle admits Amazon represents  
 5 only 20% of its sales, and ThermoLife will suffer the irreparable harm of being forced to  
 6 compete against infringing products. Finally, the public interest does not favor an  
 7 injunction. To the contrary, it favors protecting ThermoLife's patent rights and putting a  
 8 stop to the unlawful sale of infringing products on Amazon.

9 The Court should deny Cardio Miracle's request for a preliminary injunction.

## 10 **II. STATEMENT OF FACTS**

11 ThermoLife previously set forth a comprehensive statement of facts. Dkt. 52 at 4-7;  
 12 Dkt. 61 at 2-5; Dkt. 75 at 2-3. The facts below are most pertinent to the Renewed Motion.

13 The '531 patent relates to novel solid supplement formulations that offer benefits  
 14 such as improved vasodilation, circulation, solubility, and dose efficiency. Dkt. 25-4 at  
 15 18:47–19:33, 24:27–25:38, 25:50–58; Dkt. 52-8 ¶ 15.

16 Cardio Miracle infringes claim 62 through its ongoing sales of dietary supplement  
 17 products including those identified in ThermoLife's Counterclaims ("Accused Products").  
 18 Dkt. 25. That infringement was clear even before these proceedings based on scientific  
 19 testing by Eurofins, a third-party laboratory, and Cardio Miracle's own product materials.  
 20 Dkts. 52-18; 52-6 at 18–19. The Accused Products are "a solid supplement formulation"  
 21 with 369 ppm of inorganic nitrate anion (i.e., the claimed "at least one non-ester nitrate  
 22 compound"). Dkts. 52-8 ¶¶ 29–30; 25-6; 25-9; 52-28 at 49:21–50:3. The Accused  
 23 Products' labels state they contain Agmatine, Ornithine, Citrulline, and Cysteine (i.e., the  
 24 claimed "at least one isolated amino acid compound"). Dkts. 25 at ¶¶ 38-39; 25-6; 52-8 ¶  
 25 39; 52-28 at 81:10–82:21. Each isolated amino acid compound is a "separate compound  
 26 than the at least one non-ester nitrate." Dkts. 25-6; 52-8 ¶¶ 38, 29–39.

1           These proceedings, which have now lasted over seven months, yielded evidence that  
2 confirms infringement. Contrary to its “disclaimer” non-infringement theory here, Cardio  
3 Miracle and its declarants have admitted that “claim 62 emerged from the reexamination  
4 *with no [nitrate] quantity limitation.*” Dkts. 20 at 20; 52-28 at 159:19-167:25 (Cardio  
5 Miracle’s Director of Nutrition admitting that claim 62 does not recite “supplementary  
6 amount of nitrate”). Cardio Miracle’s own testing confirms the Accused Products contain  
7 “at least one non-ester nitrate compound”—specifically, 3.95 mg of non-ester nitrates per  
8 10 g of product. Dkt. 1-9. Cardio Miracle’s Director admits Cardio Miracle “deliberately”  
9 adds (i) organic beet root, which it knows “contains nitrate,” and (ii) “L-citrulline” and “L-  
10 ornithine,” which are “at least one isolated amino acid compound.” Dkt. 52-28 at 56:10-  
11 14, 78:10-14, 80:1-4. And each “is a separate compound than the at least one non-ester  
12 nitrate compound.” In stark contrast to Cardio Miracle’s repeated assurances to this Court  
13 that the Accused Products contain “only *de minimis* amounts of nitrate,” Cardio Miracle  
14 unambiguously advertises that its products are “*rich in heart-healthy nitrates.*” Dkt. 20 at  
15 18; Ex. A at 3. And, independently, ThermoLife’s expert and Professor of Applied  
16 Physiology, Dr. Jones, details why the Accused Products infringe claim 62. Dkt. 52-8 ¶¶  
17 29–31, 38-39. Cardio Miracle does not rebut his opinions, let alone via an expert.

18           Cardio Miracle made a tactical choice to improperly delay these preliminary  
19 injunction proceedings. That delay has unduly prejudiced ThermoLife because it  
20 stipulated—out of respect for this Court and based on the parties’ express agreement that  
21 the preliminary injunction briefing would be complete *by July 3, 2025*—it would not renew  
22 an Amazon takedown based on the ’531 patent until this Court ruled on the preliminary  
23 injunction. Dkts. 22; 23. To bring finality to these proceedings, ThermoLife filed a motion  
24 to strike the new and untimely arguments and expert declaration in Cardio Miracle’s reply.  
25 Cardio Miracle told the Court it would be “manifestly unfair” to strike its new arguments  
26 and argued ThermoLife’s Opposition and Dr. Jones’s opinions had “startling contradictory



1 impacts on ThermoLife’s positions.” Dkt. 73 at 1, 16. But the “startling contradiction” is  
 2 that Cardio Miracle went on to **abandon** nearly all of those untimely materials despite  
 3 telling the Court it would be unfair to exclude them. Those arguments are waived.

### 4 **III. LEGAL STANDARDS**

5 Because Cardio Miracle seeks to enjoin ThermoLife from enforcing its patent rights  
 6 and communicating about them, “federal law **requires** a showing of bad faith” as a threshold  
 7 matter. *Myco Indus., Inc. v. Blephex, LLC*, 955 F.3d 1, 10 (Fed. Cir. 2020). Reflecting  
 8 these First Amendment principles, the Federal Circuit has explained that injunctions in this  
 9 context are a “**rarity**” and appropriate only in “exceptional circumstances.”<sup>1</sup> *GP Indus., Inc.*  
 10 *v. Eran Indus., Inc.*, 500 F.3d 1369, 1373–74 (Fed. Cir. 2007).<sup>2</sup>

11 In addition, Cardio Miracle must make a “clear showing” of four factors to obtain  
 12 the “extraordinary remedy” of a preliminary injunction: (1) it is “likely to succeed on the  
 13 merits,” (2) it is “likely to suffer irreparable harm in the absence of preliminary relief,” (3)  
 14 the “balance of equities tips in [its] favor,” and (4) an “injunction is in the public interest.”  
 15 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20–22 (2008).

### 16 **IV. ARGUMENT**

#### 17 **A. Cardio Miracle’s Continued Failure To Address The Threshold “Bad Faith” Requirement Is Dispositive**

18 In its original motion Cardio Miracle did not address the threshold “bad faith”  
 19 requirement. Dkts. 20; 52 at 8-11 (explaining why that is dispositive). Here, Cardio Miracle  
 20 again fails to meet its burden. It provides a single conclusory sentence: “Cardio Miracle  
 21 maintains that ThermoLife’s Amazon takedown applications and counterclaims were filed  
 22 in bad faith as ThermoLife must know that its asserted claims cannot be valid and infringed  
 23 by products with de minimums [sic] amounts of nitrate.” Dkt. 83 at 7. There is no argument  
 24

<sup>1</sup> All emphases added and internal citations and quotations omitted unless otherwise noted.

<sup>2</sup> Ninth Circuit law applies to the preliminary injunction factors; Federal Circuit law applies to patent-specific issues, including enjoining a patent owner’s speech. *Mikohn Gaming Corp. v. Acres Gaming, Inc.*, 165 F.3d 891, 894 (Fed. Cir. 1998).

1 or evidence in support. To the contrary, Cardio Miracle dismisses bad faith as “not relevant  
 2 to counts one and two for non-infringement and invalidity.” *Id.* Cardio Miracle is wrong;  
 3 it is “**required**” to make a “showing of bad faith **before** a patentee can be enjoined from  
 4 communicating his patent rights.” *Myco*, 955 F.3d at 10.

5 **1. ThermoLife’s Actions Are Not Objectively Baseless**

6 “Although bad faith in this context has both objective and subjective elements, the  
 7 former is a **threshold requirement**.” *Lite-Netics, LLC. v. Nu Tsai Cap. LLC*, 60 F.4th 1335,  
 8 1343 (Fed. Cir. 2023). A “plaintiff claiming that a patent holder has engaged in wrongful  
 9 conduct by asserting claims of patent infringement must establish that the claims of  
 10 infringement were objectively baseless.” *Globetrotter Software, Inc. v. Elan Computer*  
 11 *Group, Inc.*, 362 F.3d 1367, 1377 (Fed. Cir. 2004). Infringement allegations are objectively  
 12 baseless only if “no reasonable litigant could realistically expect success on the merits.”  
 13 *Lite-Netics*, 60 F.4th at 1343.

14 Cardio Miracle cannot show objective baselessness for three reasons. **First**, Cardio  
 15 Miracle’s egregious conduct confirms ThermoLife has meritorious positions. Cardio  
 16 Miracle told the Court it should be able to raise a host of new non-infringement arguments  
 17 on reply. But it abandoned them in the Renewed Motion, presenting only the single non-  
 18 infringement contention that was in its original motion—namely, that the Accused Products  
 19 do “not include a ‘supplementary amount’ of nitrates.” Dkt. 83 at 9. Cardio Miracle is  
 20 wrong. The words “supplementary amount” do not appear in claim 62—and nothing in the  
 21 intrinsic record justifies importing that limitation. *Supra* at 3; *infra* at 9-10. But even under  
 22 this strained interpretation, the Accused Products infringe. In fact, Cardio Miracle says the  
 23 **opposite** to its customers in its current marketing material by promoting the Accused  
 24 Products as “**rich in heart-healthy nitrates**.” Ex. A at 3. Cardio Miracle cannot credibly  
 25 maintain that, for litigation purposes, the Accused Products lack a “supplementary amount”  
 26 of nitrates because they contain only “de minimis amounts,” while simultaneously telling

1 the public that the same products are “rich” in the quantity of “heart-healthy nitrates.”  
2 Cardio Miracle’s marketing materials confirm infringement and its litigation-derived  
3 position precludes any accusation that ThermoLife pursued infringement in bad faith.

4 ***Second***, unlike its Complaint and original motion, Cardio Miracle no longer disputes  
5 that ThermoLife tested the Accused Products for nitrates before submitting the Amazon  
6 Takedown. Cardio Miracle in fact admits that its products contain nitrates (Dkt. 83 at 9)  
7 and that claim 62’s plain language does not specify a minimum amount of nitrate. *Supra* at  
8 3. That should end the inquiry because it is black letter law that “the words of a claim are  
9 generally given their ordinary and customary meaning.” *Phillips v. AWH Corp.*, 415 F.3d  
10 1303, 1312 (Fed. Cir. 2005) (en banc). Instead, Cardio Miracle argues ThermoLife  
11 “disclaimed” nitrate quantities that are not “supplementary” or are less than 20-30 mg. Dkt.  
12 83 at 8-9. That is incorrect—and in any event, Cardio Miracle’s ever-shifting argument  
13 does not support bad faith.

14 The Federal Circuit’s *Lite-Netics* decision is instructive. 60 F.4th at 1347–1379.  
15 There, the accused infringer sought a preliminary injunction based on a non-infringement  
16 position that relied on a similar claim construction argument as Cardio Miracle’s (called  
17 “prosecution history estoppel”). *Id.* at 1347. The Federal Circuit rejected its argument,  
18 explaining that “at this stage of the litigation (before, e.g., full claim-construction  
19 proceedings or possible expert reports on infringement),” the accused infringer failed to  
20 show “prosecution history estoppel [was] ***so clearly applicable*** that it is objectively baseless  
21 for [patentee] to assert infringement,” which is “a determination at the core of the rationale  
22 for granting the preliminary injunction.” *Id.* at 1344–45. And “[e]ven if a claim-  
23 construction analysis may ultimately support” its position (it does not), ThermoLife’s “view  
24 is not objectively baseless.” *Id.* at 1347–48; *Myco*, 955 F.3d at 10–14 (reversing injunction  
25 based on disclaimer because there was no bad faith). The same result follows here. Cardio  
26 Miracle cannot show that its “disclaimer” theory is “so clearly applicable that it is

objectively baseless for [ThermoLife] to assert infringement.” *Lite-Netics*, 60 F.4th at 1347.

**Third**, Cardio Miracle does not attempt to show that ThermoLife’s belief in the validity of its patent is objectively baseless. “If a district court weighing a motion to enjoin a patentee from communicating its rights determines the patent in question is not *necessarily* invalid or unenforceable, the objective baselessness requirement is not met, and no injunction should issue.” *Judkins v. HT Window Fashion Corp.*, 529 F.3d 1334, 1339 (Fed. Cir. 2008). Even beyond the statutory presumption of validity, the PTO has scrutinized claim 62 after issuance in reexamination and confirmed *its validity*. Dkts. 25-5; 25-6. Claim 62 has also withstood summary judgment and other district court challenges against prior art similar to Cardio Miracle’s here. *ThermoLife Int’l, LLC. v. Hi-Tech Pharms., Inc. (“Hi-Tech”)*, No. 15-cv-00892, Dkts. 383, 464, 474 (N.D. Ga. Aug. 4, 2023). ThermoLife’s belief in the validity of its patent is well-founded. *Judkins*, 529 F.3d at 1339.

## 2. *ThermoLife’s Actions Are Not Subjectively Baseless*

Because Cardio Miracle has twice now failed to address “objective baselessness,” the Court need not reach “subjective bad faith.” *Lite Netics*, 60 F.4th at 1344 (“Subjective bad faith must be addressed if allegations are determined to be objectively baseless, but not otherwise.”). In any event, Cardio Miracle is silent on subjective bad faith; it never shows that ThermoLife believed its infringement assertions to Amazon were baseless. Nor could it. The record here confirms the Accused Products infringe and that ThermoLife’s communications to Amazon were not in bad faith. *Supra* at 2-3. Cardio Miracle’s failure to show bad faith “alone warrants” denial of an injunction. *Myco*, 955 F.3d at 10 (enjoining patentee’s speech without finding of bad faith was abuse of discretion); *GP Indus.*, 500 F.3d at 1373–74; *Lite-Netics*, 60 F.4th at 1343.

## B. Cardio Miracle Fails To Show The *Winter* Factors Are Met

Because Cardio Miracle failed to establish bad faith, the Court need not reach the four preliminary injunction factors. Still, Cardio Miracle fails to meet that burden.

1 ***1. No Likelihood Of Success On The Merits***

2 “The burden is always on the movant to show that it is likely to succeed on the  
3 merits.” *BlephEx, LLC v. Mycon Indus., Inc.*, 24 F.4th 1391, 1398 (Fed. Cir. 2022).<sup>3</sup> Cardio  
4 Miracle “is required to show likelihood of success on the merits that its products do not  
5 infringe the [’531] patent or that the [’531] patent is invalid.” *NOSSK, Inc. v. Fitness*  
6 *Anywhere LLC*, No. 21-cv-08914-BLF, 2022 WL 1093662, at \*4 (N.D. Cal. Apr. 12, 2022).

7 **No likelihood of success on non-infringement.** Cardio Miracle told the Court it  
8 was critical that it raise a new non-infringement argument on reply—and yet now advances  
9 the single non-infringement argument it originally made: the Accused Products do not have  
10 “a ‘supplementary amount’ or more than 20-30 mg of nitrates.” Dkt. 83 at 8. But Cardio  
11 Miracle concedes claim 62 lacks any express nitrate limitation. *Supra* at 3. Rather, Cardio  
12 Miracle’s theory is that ThermoLife “disclaimed” the full scope of claim 62 by adding a  
13 silent requirement to the claim. *Id.* Cardio Miracle is wrong.

14 Cardio Miracle “bears the burden of proving the existence of a ***clear and***  
15 ***unmistakable*** disclaimer that would have been evident to one skilled in the art.”  
16 *Massachusetts Inst. of Tech. v. Shire Pharms., Inc.*, 839 F.3d 1111, 1120 (Fed. Cir. 2016).  
17 That is a “high burden,” especially at the preliminary injunction stage. *Lite-Netics*, 60 F.4th  
18 at 1344–45; *Image Processing Techs. LLC v. LG Elecs. Inc.*, No. 2023-2136, 2025 WL  
19 323779, at \*5 (Fed. Cir. Jan. 29, 2025).

20 *NOSSK* is instructive. 2022 WL 1093662, at \*1–7. As here, the accused infringer  
21 sought to enjoin the patent owner from filing Amazon takedowns. *Id.* at \*1. The accused  
22 infringer acknowledged its product had a single-strap, but argued the patentee had  
23 “disclaimed” a single-strap embodiment in statements to the PTO, thereby narrowing the  
24 claim. The court disagreed, finding that “at this preliminary stage, without the aid of claim

25 <sup>3</sup> Cardio Miracle is wrong that “ThermoLife has the burden of proving infringement.” Dkt.  
26 83 at 9. ThermoLife has the ultimate burden of proving infringement at trial; at this stage,  
the burden is on Cardio Miracle. *Id.*

1 construction or expert discovery, the [c]ourt has insufficient evidence to make a  
2 determination” on disclaimer, especially where the examiner’s statements indicated the  
3 patentee had not disclaimed the use of a single strap. *Id.* at \*6–7.

4 The same result follows here. Cardio Miracle cites three statements from the 2020  
5 reexamination (that upheld the validity of the claim) to support its “disclaimer” argument.  
6 Dkt. 83 at 8. None limits claim 62. **First**, Cardio Miracle relies on statements made by  
7 ThermoLife to overcome the Re-Examiner’s initial rejection of claim 62 over two  
8 references—“Harris” and “Yoshimura”—which allegedly disclosed 0.02 mg and 0.1 mg of  
9 nitrates, respectively. *Id.* ThermoLife argued that those quantities were insufficient to  
10 disclose the “non-ester nitrate limitation” and invalidate claim 62. Dkt. 1-6 at 30; *id.* at 9  
11 (describing the 0.02 mg of nitrates in Harris as not a “supplement formulation”); *id.* at 11-  
12 12 (similar); Dkt. 52-8 ¶¶ 32–36. But the Re-Examiner rejected, and ThermoLife  
13 abandoned, that argument. That is a critical fact that Cardio Miracle never addresses.

14 “[W]here an applicant abandons its unsuccessful argument, we conclude that the  
15 prosecution history lacks the clarity necessary to establish prosecution disclaimer.”  
16 *Malvern Panalytical Inc. v. TA Instruments-Waters LLC*, 85 F.4th, 1365, 1376 (Fed. Cir.  
17 2023). Here, the Re-Examiner rejected ThermoLife’s argument regarding the 0.1 and 0.02  
18 mg of nitrate in Harris and Yoshimura as “not persuasive because [ThermoLife] is arguing  
19 limitations that are *not* in the claims. ***The claims do not specify how much nitrate***  
20 ***compound or amino acid are in the composition.***” Dkt. 52-20 at 7; Dkt. 52-8 ¶ 35.  
21 ThermoLife then abandoned that argument, and amended claim 62 to remove certain amino  
22 acids allegedly disclosed by Harris and Yoshimura. Dkt. 52-21 at 34 (noting removal of  
23 creatine to overcome Harris); *Id.* at 36–37 (noting removal of glutamine, isoleucine, leucine,  
24 and valine to overcome Yoshimura); Dkt. 52-8 ¶ 35. On that basis, the Re-Examiner  
25 allowed claim 62 because it was “amended to exclude prior art compositions” (i.e., certain  
26 amino acids). Dkts. 52-21 at 7; 52-8 ¶ 35. There is no “prosecution disclaimer where an

1 applicant made an allegedly disclaiming argument to overcome prior art, the examiner  
2 disagreed, and the applicant never repeated the allegedly disclaiming statements and instead  
3 offered alternative reasons to overcome the prior art.” *Malvern*, 85 F.4th at 1376.

4 **Second**, Cardio Miracle contends that ThermoLife’s expert, Dr. Lundberg, argued  
5 “that a supplementary or effective amount of nitrate would need to be more than is present  
6 in a single meal, or more than 20-30 mg or [sic] nitrate.” Dkt. 83 at 8. Not so. As an initial  
7 matter, the terms “supplementary” and “effective amount” are not in claim 62, so this  
8 argument is misplaced. Moreover, Dr. Lundberg did not state that claim 62 (or any other  
9 claim) requires more than 20–30 mg of nitrate. Rather, he stated only that in the 2006-2007  
10 timeframe, he “and other nitrate researchers expected that any effect of nitrate  
11 administration ... would require amounts of nitrate that are over ... 20-30 mg of nitrate,”  
12 and thus, that ThermoLife’s invention—which taught that the combination of nitrates and  
13 amino acids would have a synergistic effect—was unexpected. Dkt. 1-7 ¶ 6. That is  
14 irrelevant to whether claim 62 requires a minimum nitrate amount.

15 Cardio Miracle also argues Dr. Lundberg said the background amount of nitrate  
16 entering the body from saliva is 6-12 mg, which implies claim 62 requires more than that  
17 amount. Dkt. 83 at 8. That is inaccurate. Dr. Lundberg stated that “it seems unlikely that  
18 adding another 0.1 mg of nitrate on top of” the nitrate “from intake of lettuce or beetroot”  
19 and the “6-12 mg nitrate” from saliva will “produce any biologically meaningful effect.”  
20 Dkts. 1-7 ¶ 8; 52-8 ¶ 34. Neither ThermoLife nor Dr. Lundberg said that 10 mg or 20–30  
21 mg is the floor for a “supplementary” or “effective” dose of nitrate, let alone for claim 62.  
22 Statements that are, at most, “ambiguous or amenable to multiple reasonable  
23 interpretations” are not disclaimers. *Shire*, 839 F.3d at 1119.

24 Cardio Miracle’s non-infringement argument fails for three additional reasons.  
25 **First**, even under Cardio Miracle’s (incorrect) assertion that claim 62 requires “a  
26 ‘supplementary amount,’” the Accused Products still infringe. Dkt. 83 at 8. As explained



1 above, Cardio Miracle advertises that the Accused Products are “**rich in heart-healthy**  
 2 **nitrates.**” Ex. A at 3. That is, Cardio Miracle tells its customers that the Accused Products  
 3 contain a “rich” quantity of nitrates that provides “heart-healthy” or cardiovascular benefits.  
 4 That confirms a “supplementary amount” of nitrates. **Second**, as Dr. Jones details, Cardio  
 5 Miracle’s own testing shows 3.95 mg of nitrates per 10 g of product (i.e., 0.395 mg of  
 6 nitrates per gram of product). Dkt. 52-8 ¶ 31. Thus, Cardio Miracle’s Accused Product  
 7 (which weighs 947.5 grams) contains approximately 374 mg of nitrates (i.e., 0.395 mg  
 8 nitrate/g x 947.5 g = 374 mg of nitrate). *Id.* That is indisputably a “supplementary amount”  
 9 and certainly more than 20-30 mg. *Id.* Cardio Miracle never rebuts this calculation.

10 **Third**, Cardio Miracle’s argument violates the doctrine of claim differentiation. “[I]t  
 11 is presumed that different words used in different claims result in a difference in meaning  
 12 and scope for each of the claims.” *Clearstream Wastewater Systems, Inc. v. Hydro-Action,*  
 13 *Inc.*, 206 F.3d 1440, 1446 (Fed. Cir. 2000). Here, when ThermoLife intends to specify the  
 14 amount of nitrate, the claim language says so. For instance, claim 1 of the ’531 patent  
 15 requires “**30.7 mg** nitrate ion,” and claim 8 requires a “**pharmaceutically effective amount**  
 16 of at least one nitrate salt compound.” Dkt. 25-6 at claims 1 and 8.<sup>4</sup> “[I]f [ThermoLife]  
 17 intended to restrict [claim 62] to require” a specific nitrate content, “it could have included  
 18 that same limitation” as in claims 1 or 8, but it did not. *Unwired Planet, LLC v. Apple Inc.*,  
 19 829 F.3d 1353, 1358–59 (Fed. Cir. 2016); *Myco*, 955 F.3d at 14 (reversing preliminary  
 20 injunction where movant’s argument “violate[d] the doctrine of claim differentiation”).

21 **No likelihood of success on invalidity.** Cardio Miracle abandons many of the  
 22 arguments it raised in its reply and advances the same defective prior art invalidity  
 23 arguments it raised in its original PI motion. The ’531 patent “enjoys the same presumption

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24 <sup>4</sup> The PTO found **different claims** (including claims 1 and 8) to be patentable because they  
 25 “now require minimum amounts of nitrate ion ... or require that the compositions contains  
 26 an amount of nitrate sufficient to provide the stated physiological effect.” Dkt. 52-22 at 7;  
 Dkt. 52-8 ¶ 35. Importantly, the PTO did **not** make that statement about claim 62. *Id.*



1 of validity during preliminary injunction proceedings as at other stages of litigation.” *Titan*  
 2 *Tire Corp. v. Case New Holland, Inc.*, 566 F.3d 1372, 1376 (Fed. Cir. 2009). Cardio  
 3 Miracle cannot show it is likely to overcome that presumption.

4 ***No Anticipation Under 35 U.S.C. § 102.*** Anticipation requires that a single prior art  
 5 reference discloses every claimed element, explicitly or inherently. *Cohesive Techs., Inc.*  
 6 *v. Waters Corp.*, 543 F.3d 1351, 1364 (Fed. Cir. 2008). Courts routinely reject conclusory  
 7 invalidity arguments unsupported by expert analysis, like Cardio Miracle’s. *EZ-Ink, Inc. v.*  
 8 *Brother Indus., Ltd.*, No. 2:21-cv-564, 2021 WL 7909312, at \*4 (E.D. Va. Dec. 8, 2021).

9 Cardio Miracle cites Yoshimura, Harris, Miladinov, and Giampapa as alleged “prior  
 10 art references that disclose dietary supplements containing the amino acids recited in claim  
 11 62 of the ’531 Patent, along with various compounds that contain nitrates, including  
 12 thiamine mononitrate.” Dkt. 83 at 10. Not so. As to Yoshimura and Harris, the PTO  
 13 rigorously considered those references’ alleged disclosure of certain amino acids and  
 14 thiamine mononitrate during the 2020 reexamination ***and confirmed claim 62’s***  
 15 ***patentability over both references.*** Dkts. 52-22 at 7; 52-8 ¶¶ 35-36. Cardio Miracle  
 16 identifies no errors or gaps in the Re-Examiner’s findings. As to Miladinov and Giampapa,  
 17 Cardio Miracle provides no pin cites or claim charts showing how those references disclose  
 18 the specific claimed combination. *See* Dkt. 52-8 ¶¶ 44–55; *NOSSK*, 2022 WL 1093662, at  
 19 \*8 (no likelihood of success on invalidity where alleged infringer “failed to provide claim  
 20 charts, annotated diagrams, or any other evidence” linking claims to prior art). Nor could  
 21 it. As Dr. Jones explains, Miladinov discloses formulations with significant levels of oil,  
 22 meaning it does not disclose a “solid supplement formulation” as required by claim 62. Dkt.  
 23 52-8 ¶ 46. And Giampapa does not disclose nitrates at all. *Id.* ¶ 47.

24 ***No Invalidity Under 35 U.S.C. § 101.*** Patent eligibility is assessed in a two-step  
 25 framework: at step one, the court asks whether the claim is “directed to” a law of nature,  
 26 natural phenomenon, or abstract idea; if not, the analysis ends. *Rapid Litig. Mgmt. Ltd. v.*

1 *CellzDirect, Inc.*, 827 F.3d 1042, 1047 (Fed. Cir. 2016); *Mayo Collaborative Servs. v.*  
2 *Prometheus Labs., Inc.*, 566 U.S. 66 (2012). If so, the court proceeds to step two, asking  
3 whether the additional elements, alone and in combination, transform the claim into a  
4 patent-eligible application. *Id.* Claim 62 passes under both steps.

5 Cardio Miracle argues that “[w]ithout an effective or ‘supplementary amount’ of  
6 nitrates, the ’531 patent would not possess markedly different characteristics from amino  
7 acids and nitrates found in nature.” Dkt. 83 at 11. That is inaccurate and the wrong test.  
8 The Section 101 inquiry is whether the claimed subject matter—the formulation as a  
9 whole—reflects “a product of human ingenuity having a distinctive name, character [and]  
10 use ... with markedly different characteristics from any found in nature.” *Ass’n for*  
11 *Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 590 (2013). Cardio Miracle  
12 has not shown any composition in nature that includes a “non-ester nitrate” and “isolated  
13 amino acids compounds,” each as “a separate compound.” Dkt. 52-8 ¶¶ 30–42. Because  
14 claim 62 recites a new and useful composition of matter not found in nature, the § 101  
15 inquiry ends at step one. *Thales Visionix Inc. v. U.S.*, 850 F.3d 1343, 1349 (Fed. Cir. 2017).

16 If the Court reaches step two, Cardio Miracle argues claim 62 “would not possess  
17 markedly different characteristics from amino acids and nitrates found in nature,” “may”  
18 fail the utility and enablement requirements, and would be ineffective as a supplement. Dkt.  
19 83 at 11. That fails for two reasons. **First**, Cardio Miracle presents no analysis or evidence,  
20 in stark contrast to *ChromaDex Inc. v. Elysium Health Inc.*, which it misreads. 59 F.4th  
21 1280 (Fed. Cir. 2023). There, the court found that each element of the claims reads on milk.  
22 *Id.* at 1283. Here, Cardio Miracle has identified no naturally occurring formulation that  
23 meets each element of claim 62. Further, in *ChromaDex*, the “markedly different  
24 characteristics” determination was based on a comparison to the claimed composition, not  
25 its individual constituents as Cardio Miracle asserts. *Id.* at 1284. **Second**, the ’531 patent  
26 teaches that the claimed formulation has utility and markedly different characteristics—the

1 combination of ingredients achieves synergistic effects beyond the properties of the  
2 individual components. Dkt. 25-4 at 26:63–27:2; Dkt. 52-8 ¶ 15.

3 ***Claim 62 Includes a Proper Markush Group.***<sup>5</sup> Cardio Miracle argues that claim 62  
4 is invalid “due to an improper Markush group” because “the alternatives (amino acids) are  
5 not members of the claimed group (amino acid compounds).” Dkt. 83 at 12. Not so. That  
6 argument is based on the premise that an amino acid cannot be an “amino acid compound.”  
7 But the ’531 patent explicitly states that “amino acids” ***are*** compounds. For example, it  
8 states: “***Compounds*** containing both a carboxyl group and an amino group ***are typically***  
9 ***known as Amino Acids.***” Dkt. 25-4 at 2:59-60. The ’531 patent further states that a  
10 “Compound” can be “a chemical substance comprising ***two or more different chemically***  
11 ***bonded chemical constituent elements*** or ingredients.” *Id.* at 6:45–67. And Cardio Miracle  
12 admits that an “amino acid” is “***a compound*** with an  $\alpha$ -amino group ( $-\text{NH}_2$ ), a carboxyl  
13 group ( $-\text{COOH}$ ),” i.e., two different chemically bonded constituent elements. Dkt. 57 at 3.

## 14 2. ***No Irreparable Harm***

15 Cardio Miracle again fails to establish irreparable harm from the Amazon takedown  
16 (or any other action by ThermoLife). Originally, Cardio Miracle alleged it suffered  
17 reputational harm, loss of goodwill, and lost sales, but presented only (alleged) evidence of  
18 lost sales. Dkt. 20 at 26-27. ThermoLife highlighted this failure of proof in its Opposition  
19 and explained that the alleged lost sales were quantifiable and did not constitute irreparable  
20 harm. Dkt. 52 at 23-27. In its Renewed Motion, Cardio Miracle’s entire irreparable harm  
21 argument is a single sentence: “While Cardio Miracle’s lost sales have been substantial,  
22 ThermoLife’s takedowns have compromised Cardio Miracle’s standing, status, and  
23 goodwill which is irreparable with money damages.” Dkt. 83 at 12-13.

24 The only “evidence” Cardio Miracle cites—allegations in its complaint and a

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25 <sup>5</sup> A “Markush group” claim limitation includes a list of alternatively useable members (e.g.,  
26 “a material selected from the group consisting of A, B, and C.”). Ex. B (M.P.E.P. § 2117).

1 declaration from Bruce Haglund, the VP of Finance, who merely repeats those allegations.  
2 *Shenzhen Laiderui Lighting Technology Co. Ltd. v. Zhang*, No. 2:24-cv-562, 2024 WL  
3 22520116, at \*2 (W.D. Wash. May 17, 2024) (finding “few conclusory statements in a  
4 declaration” insufficient to show irreparable harm to goodwill and reputation).

5 Mr. Haglund has made such “conclusory, uncorroborated” statements before. He  
6 did so in proceedings that led to his criminal conviction for financial fraud. *S.E.C. v. Wilde*,  
7 2012 WL 6621747, at \*11 (C.D. Cal. Dec. 17, 2012) (finding Haglund “acted egregiously  
8 and with a high degree of scienter in aiding and abetting a non-existent, fraudulent prime  
9 bank investment scheme”). Indeed, much of his declaration here was lifted from a different  
10 declarant in another case, belying his testimony that he drafted it “from scratch.” Dkts. 52-  
11 4; 52-5; and 52-29 at 37:4-21. His statements should be given no weight.

12 While “[e]vidence of loss of control over business reputation and damage to  
13 goodwill [can] constitute irreparable harm,” “concrete evidence in the record” is required.  
14 *Adidas Am., Inc. v. Skechers USA, Inc.*, 890 F.3d 747, 757 (9th Cir. 2018) (alteration in  
15 original). Cardio Miracle offers no concrete evidence. It identifies no customer who is  
16 even aware of ThermoLife’s infringement assertions, much less reluctant to do business as  
17 a result. It submits no customer affidavits, no data showing lasting loss of market share,  
18 and no proof of reputational injury. Indeed, its VP of finance “quantifie[d] the harm in  
19 dollar terms that Cardio Miracle believes it has experienced due to Amazon’s delisting of  
20 the accused products.” Dkt. 52-29 at 19:16–20, 58:1–12. Cardio Miracle cannot sustain its  
21 burden. *Zhang*, 2024 WL 22520116, at \*2; *EZ-Ink*, 2021 WL 7909312, at \*10.

22 Cardio Miracle cites *John B. Hull, Inc. v. Waterbury Petroleum Prods., Inc.* for the  
23 notion that an “inability to supply customers threatens ‘reputation’ as a ‘dependable  
24 distributor.’” 588 F.2d 24, 29 (2d Cir. 1978); Dkt. 83 at 12. But *Hull* involved a plaintiff  
25 “*deprived totally*” of the opportunity to sell its products. 588 F.2d at 29. Here, Amazon  
26 makes up *only 20%* of Accused Products’ sales, so even if Amazon removed them, Cardio

1 Miracle could still make the vast majority of its sales elsewhere. Dkt. 20-4 ¶ 8.

2 Cardio Miracle’s reliance on *Medcursor Inc. v. Shenzhen KLM Internet Trad’g Co.*,  
 3 543 F. Supp. 3d 866 (C.D. Cal. 2021) is misplaced. Dkt. 83 at 13. *Medcursor* underscores  
 4 why Cardio Miracle’s showing is inadequate. There, the court initially denied a TRO for  
 5 lack of evidence of harm (*id.* at 877) and found irreparable harm only after the plaintiff  
 6 submitted concrete proof that (i) it “sells its products ***almost exclusively*** on Amazon” and  
 7 the notice would “effectively put [it] out of business,” and (ii) it had lost “first-page status”  
 8 on Amazon (*id.* at 878–79). Here, the opposite is true. Cardio Miracle does not sell “almost  
 9 exclusively on Amazon,” and after six months of discovery presents no evidence of lost  
 10 “first-page status,” reputational harm, or loss of goodwill.

### 11 **3. The Balance Of Equities Weighs In ThermoLife’s Favor**

12 The equities cut against Cardio Miracle given its conduct here. Cardio Miracle  
 13 claimed an “urgent” need for relief. But after securing ThermoLife’s agreement not to  
 14 request Amazon takedowns until resolution of its original PI request—on the understanding  
 15 that briefing would be completed by July 3—it delayed at every turn, including ultimately  
 16 abandoning the very arguments it told the Court would be “manifestly unfair” to strike.  
 17 Those choices reflect gamesmanship and weigh against extraordinary injunctive relief.

18 Cardio Miracle argues that removing its “products from Amazon causes irreparable  
 19 harm,” while “ThermoLife stands to gain only a royalty.” Dkt. 83 at 13. Not so.  
 20 ThermoLife has invested substantial resources in developing, patenting, and  
 21 commercializing its technology, which it licenses to the supplement industry and enforces  
 22 its patents against unauthorized use. An injunction barring enforcement of the ’531 patent  
 23 against Cardio Miracle harms ThermoLife’s reputation and undermines its relationships  
 24 with its licensees. *Douglas Dynamics, LLC v. Buyers Prods. Co.*, 717 F.3d 1336, 1345  
 25 (Fed. Cir. 2013) (“Where two companies are in competition against one another, the  
 26 patentee suffers the harm—often irreparable—of being forced to compete against products

1 that incorporate and infringe its own patented inventions.”); *Robert Bosch LLC v. Pylon*  
 2 *Mfg. Corp.*, 659 F.3d 1142, 1156 (Fed. Cir. 2011).

3 Cardio Miracle’s “status quo” argument is similarly unavailing. Dkt. 83 at 13. The  
 4 Court should not “allow [Cardio Miracle] to continue infringing conduct merely because it  
 5 was doing so before the legal action.” *EZ-Ink*, 2021 WL 7909312, at \*5. “If [the accused  
 6 infringer] has allowed itself to become excessively dependent upon infringing sales, the  
 7 status quo catchword does not necessarily allow it to continue such dependence.” *Atlas*  
 8 *Powder*, 773 F.2d at 1232. The same applies here.

#### 9 **4. A Preliminary Injunction Is Not In The Public Interest**

10 “[A]n order preventing [ThermoLife] from enforcing a presumptively valid patent,  
 11 serves no public purpose.” *Marcala, LLC v. RVLock & Co., LLC*, 2024 WL 3252891, at \*2  
 12 (M.D. Fla. July 1, 2024). Patents are “affected with a public interest” and exist to  
 13 “promot[e] the Progress of Science and useful Arts.” *Precision Instrument Mfg. Co. v.*  
 14 *Auto. Maint. Mach. Co.*, 324 U.S. 806, 816 (1945). Therefore, “the public interest favors  
 15 protecting patent rights.” *Power Probe Grp., Inc. v. Innova Elecs. Corp.*, No. 2024-1166,  
 16 2025 WL 798861, at \*3 (Fed. Cir. Mar. 13, 2025).

17 Allowing Cardio Miracle to continue selling its infringing products on Amazon  
 18 disserves the public interest. The Accused Products are not “essential life-saving” goods  
 19 (*id.*), and Amazon accounts for just 20% of Cardio Miracle’s sales, so customers can buy  
 20 its products elsewhere (subject to any litigation or other outcomes). Further, ThermoLife’s  
 21 licensees also sell on Amazon, so the public can still benefit from the patented invention.

#### 22 **V. CONCLUSION**

23 ThermoLife respectfully requests that the Court deny Cardio Miracle’s Motion.

24 The Court permitted Cardio Miracle to re-file its motion with the benefit of a  
 25 complete record. ThermoLife has rebutted the arguments in the Renewed Motion. Cardio  
 26 Miracle should not be permitted to again raise new or abandoned arguments on reply.

1 Dated: December 5, 2025

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 5, 2025, a copy of the foregoing was filed electronically using the Clerk of Court's CM/ECF system, which will provide notice to all counsel of record.

/s/ Gregory K. Sobolski  
Gregory K. Sobolski